IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

RICKY JOE BLODGETT, :

No. 4-00-CV-10058

Plaintiff.

REPORT AND RECOMMENDATION

ON DEFENDANT'S MOTION FOR

SUMMARY JUDGEMENT

:

A. E. DUNHAM, JR.,

VS.

:

Defendant.

This matter comes before the court on Defendant's, A. E. Dunham, Jr.'s, resisted Motion for Summary Judgment (Clerk's No. 22). Plaintiff, Ricky Joe Blodgett, an inmate at the Clarinda Correctional Facility (CCF), Clarinda, Iowa, brings this civil action pursuant to 42 U.S.C. § 1983, claiming that Dunham, CCF's Director of Dental Services, was deliberately indifferent to his serious medical needs. Specifically, Blodgett alleges that after Dunham extracted one of the inmate's teeth, he failed to X-ray to confirm that no tooth fragments remained in the inmate's mouth. Blodgett alleges that as a result, a fragment of the tooth, the root tip, was left in his mouth, causing severe pain. Blodgett further alleges that following extraction of the root tip, Dunham refused to provide him adequate pain medication or a liquid diet. Blodgett seeks damages for pain and suffering, and injunctive and declaratory relief.

In his Motion, Dunham asserts there are no disputed material facts and that he is entitled to judgement as a matter of law, or alternatively, to qualified immunity.

Blodgett filed a Resistance on October 23, 2000, an Affidavit on November 8, 2000, and a medical expert's report on February 5, 2001. This case was referred to the undersigned on March 15, 2001, for a Report and Recommendation under 28 U.S.C. § 636(b)(1)(B). This matter is fully submitted. After carefully considering the evidence in the record and the memoranda submitted by the

parties, the court finds and recommends as follows on the issues presented.

STANDARD FOR SUMMARY JUDGMENT

A court grants a motion for summary judgment when the record shows no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Tlamka v. Serrell*, 244 F.3d 628, 632 (8th Cir. 2001). The court views the summary judgment record in a light most favorable to the nonmoving party, giving that party the benefit of all reasonable inferences. *Tlamka*, 244 F.3d at 632.

The moving party bears the initial burden of informing the court of its basis for the motion and identifying the parts of the record that show lack of a genuine issue. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Reed v. Woodruff County, Ark.*, 7 F.3d 808, 810 (8th Cir. 1993). "When a moving party has carried its burden under Rule 56(c), its opponent must do more than simply show there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To defeat a motion for summary judgment, the nonmovant must go beyond the pleadings and establish "by affidavits, or by the depositions, answers to interrogatories, and admissions on file," that specific facts show a genuine issue for trial exists. *See* Fed. R. Civ. P. 56(c); *Celotex*, 477 U.S. at 324.

When considering an Eighth Amendment claim of deliberate indifference to a serious medical need, summary judgment is appropriate when the plaintiff has not produced sufficient evidence from which a jury could infer the defendants actually knew of, and disregarded, his serious medical needs. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986); *Boyd v. Knox*, 47 F.3d 966, 968 (8th Cir. 1995).

MATERIAL FACTS NOT IN DISPUTE

The following facts are either undisputed or are viewed in the light most favorable to Blodgett. Between April 5 and August 14, 1999, Dunham provided Blodgett treatment for several teeth, including the extraction of one tooth and a root canal on another. When Blodgett complained about tooth #14, a molar in the upper left quadrant of his mouth, Dunham tested the tooth, but the tests were inconclusive. The dentist placed a restoration on the tooth and monitored the situation.

On Saturday, December 11, 1999, a nurse called Dunham and told him Blodgett's tooth #14 was causing him pain. Dunham ordered Blodgett a prescription for Motrin, a pain reliever. On Monday morning, December 13, 1999, Dunham examined Blodgett's tooth #14 and advised the inmate to undergo a root canal. Dunham believed extraction would be hard because of the "splay of the roots." (Dunham Aff. at 3.) Blodgett, however, refused a root canal and instead chose to have the tooth pulled that day.

The extraction was easier than the dentist expected. During the procedure, however, the dentist and inmate clashed. Blodgett asserts that Dunham "became confrontational and blamed the confrontation on [Blodgett]." (Blodgett Aff. at 1.) Dunham noted on Blodgett's dental record that the inmate "was very rude and hostile." (Pl.'s Ex. 1 at 8.)

During the extraction, a root tip broke off and remained in Blodgett's jaw. The root tip was close to Blodgett's sinus. (Dunham Aff. at 3.) Dunham, who saw the broken root tip, checked to see if there was an opening into the inmate's sinus and found no opening. *Id*.

After rinsing and suctioning Blodgett's mouth, Dunham no longer saw the root tip and was "fairly sure" that the fragment had been removed. *Id.* When Blodgett asked the dentist if he had removed all the tooth fragments, Dunham said he assumed he had. (Compl. at 3.)

Dunham told the inmate that he needed to see him in a few days to get an X-ray to be sure the broken root tip had been removed. (Dunham Aff. at 3; *see* Pl. Ex. 1 at 8 (stating on Blodgett's dental record, "very loose root tip disappeared after rinse & suction . . . will review in one week, just to make sure.")). Blodgett was bleeding, and it was hard for Dunham to see through the blood. (Dunham Aff. at 3.) Blodgett states that Dunham failed to X-ray Blodgett despite Blodgett's "pain and continued persistence." (Blodgett Aff. at 3, Pl.'s Statement Mat'l Facts Support Res. at 1-2.) Dunham

¹ Blodgett does not indicate whether he alleges his "pain and continued persistence" occurred only on Monday, December 13, 1999, or also over some portion of December 14 and 15. No evidence in the summary judgment record supports an inference that Blodgett's "pain and continued persistence" continued on December 14 and 15. There is nothing in the record to indicate that Blodgett complained to any staff member, or that if he made any complaint it reached Defendant Dunham, on December 14 and 15 about pain or any dental problems.

prescribed an antibiotic and a pain reliever for Blodgett on December 13; the record does not indicate how many days the prescription covered. (Pl.'s Amended Desig. Expert Witness at 3; Pl.'s Ex. 1 at 8.)

On Thursday morning, December 16, 1999, Blodgett felt sharp pain on the left side of his face and asked a correctional officer to call Health Services and arrange an emergency appointment for him with a dentist. (Compl. at 5.) Dunham contends that he called Blodgett back to the office on December 16. (Dunham Aff. at 3.)

When Blodgett saw Dunham on December 16, 1999, he told the dentist he had severe pain in his mouth and face in the area of the extraction. Dunham X-rayed Blodgett's mouth. The X-ray showed that a root tip remained and had "dropped into a defect of the bone, above and lateral to the socket space and below the sinus." *Id.* Dunham states he was correct in his December 13 post-extraction actions; because of the root tip's location, he would not have been able to remove the root tip through tooth #14's socket after the tooth was extracted. *See id.* Dunham made an incision exposing the hole in the bone, tested the space to make sure it was not sinus area, and gently ran a spoon curette around the space. Dunham then inserted a small suction device, removed the root tip, and closed the incision with two sutures. Dunham took another X-ray, which showed no remaining root tip. Blodgett asserts that the root tip was infected.

Following surgery, Blodgett's mouth hurt in the area of the extraction, and he asked Dunham to prescribe Tylenol No. 3 to relieve the pain. Tylenol No. 3 contains 30 milligrams of codeine, and is a class III controlled substance. Physician's Desk Reference 1381-82 (1992). Codeine "can produce drug dependance of the morphine type and, therefore, has the potential for being abused." *Id.* at 1382. Tylenol with codeine "should be prescribed and administered with the same degree of caution appropriate to the use of other oral narcotic-containing medications." *Id.*

Dunham refused to prescribe Tylenol No. 3 because he did not believe Blodgett's condition warranted the use of narcotics, and because he believed the medicine did "not significantly add to Motrin's pain control per documented literature." (Dunham Aff. at 4-5.) Although Blodgett became insistent, Dunham instead prescribed Motrin, which he felt would be "much more than adequate,"

because the surgery was not as long or involved as the original extraction, and Motrin had been adequate in the past. *Id.* at 4. Blodgett states that at the time, he was already taking Motrin, but that it was not "curbing the pain." (Compl. at 5.)

Because Dunham believed Blodgett fit the profile of a substance abuser, and because of Blodgett's detailed description of the medication he wanted, Dunham decided to investigate the inmate's history. (Dunham Aff. at 5.) Dunham's investigation revealed that Blodgett had a history of substance abuse; and Blodgett's medical chart indicated he was allergic to codeine, which was in Tylenol No. 3. *Id.* at 5.

Blodgett claims Dunham refused his request to prescribe a liquid diet. (Blodgett Aff. at 4.)

Dunham counters that he placed Blodgett on the liquid diet, although the dentist considered such a diet unnecessary. (Pl. Ex. 1 at 5 (stating on Blodgett's dental record on December 16, 1999, "Wants liquid diet. He does not need one, but we gave him one anyway.")). Because correctional personnel other than Dunham are responsible for distributing appropriate medical diets, Dunham states he had no knowledge of whether Blodgett received his diet in a timely or appropriate manner. (Dunham Aff. at 5-6.) Blodgett states that when he requested a liquid-diet tray one day, Health Services staff refused. It is unclear from the filings if Blodgett eventually received a liquid meal later that day. There is no evidence that Blodgett was injured from the type of diet he received post-surgery.

On December 20, 1999, Dunham removed the two sutures from Blodgett's mouth. The surgical site was "clean, healthy-looking and pink," with "no signs of swelling or redness." *Id.* at 4. Blodgett asked to return to a non-liquid diet, and he signed a form requesting discontinuance of the liquid diet. *Id.* at 4-5.

Blodgett asserts that Dunham's alleged refusal to take a post-extraction X-ray, his consequent failure to remove the root tip on December 13, 1999, and his refusal to prescribe the requested pain medication and a liquid diet, constituted deliberate indifference to the inmate's serious medical needs.

CONCLUSIONS OF LAW

I. Eighth Amendment Standard

To establish an Eighth Amendment claim for deliberate indifference to a serious medical need, a plaintiff must first establish a serious medical need and then show that the defendant was deliberately indifferent to the need. *Estelle v. Gamble*, 429 U.S. 97, 102 (1976); *Roberson v. Bradshaw*, 198 F.3d 645, 647 (8th Cir. 1999) (inmate must prove "he suffered from one or more objectively serious medical needs, and that prison officials actually knew of but deliberately disregarded those needs").

II. Failure to X-ray

A. Serious Medical Need

The objective component requires that the medical need in question must be sufficiently serious to raise an Eighth Amendment claim. *Estelle*, 429 U.S. at 104-06. The need or deprivation alleged must be supported by medical evidence, like a physician's diagnosis, or be so obvious that even a layperson would recognize the necessity for medical attention. *Roberson*, 198 F.3d at 648; *Johnson v. Busby*, 953 F.2d 349, 351 (8th Cir. 1991). A plaintiff's self-diagnosis alone cannot establish that he suffers from a serious medical need, when the medical evidence does not support his self-diagnosis. *Kayser v. Caspari*, 16 F.3d 280, 281 (8th Cir. 1994).

An inmate "who claims that delay in medical treatment [rises] to the level of a constitutional violation must place verifying medical evidence in the record to establish the detrimental effect of delay in medical treatment." *Reese v. Groose*, 60 F.3d 487, 491 (8th Cir. 1995); *see also Crowley v. Hedgepeth*, 109 F.3d 500, 502 (8th Cir. 1997).

With respect to the objective factor, a court determining whether a prison official exposed an inmate to unreasonable risk of serious damage to his future health must undertake more than a scientific inquiry into the seriousness of the potential harm and the likelihood that the alleged injury to health will actually be caused by exposure to the risk. *Helling v. McKinney*, 509 U.S. 25, 36 (1993). The court must also assess, "Whether society considers the risk that the prisoner complains of to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk." *Id.* (emphasis in original).

Dunham agreed with Blodgett that a post-extraction X-ray should be taken, but the two

disagreed on timing. After rinsing and suctioning, the dentist no longer saw the root tip. The sinus was not open. Dunham planned to X-ray a few days after the extraction. When Blodgett complained of pain on December 16, 1999, Dunham X-rayed, discovered the root tip, and removed the root tip the same day.

The record does not indicate that Blodgett suffered fever, nerve damage, swelling, numbness in his gums or face, inability to eat, altered sensation, bleeding, or loss of taste as a result of the root tip remaining in his mouth from December 13 to 16. Although he complained of pain on December 16, no evidence indicates that Blodgett suffered pain or other symptoms, on December 14 or 15. The pain he contends he suffered in Dunham's office on December 13 immediately following the tooth extraction is consistent with pain following surgery to remove a molar.

Blodgett's expert concluded that Blodgett did not have a serious medical condition. (Pl.'s Amended Desig. Expert Witness at 4.)²

A review of case law indicates that generally, a root tip left in a patient's mouth following a tooth extraction does not pose a serious risk to health. *See, e.g., Snyder v. Ash*, 596 N.E.2d 518, 522 (Ohio Ct. App. 1991) (including in appendix a dentist's consent form stating, "You may be informed following your extraction that a piece of tooth or root tip was not removed. There is generally no added complication in leaving a piece of root tip in place following an extraction. Additional surgery may be required."); *Reynolds v. Phillips*, 363 So.2d 958, 960-61 (La. Ct. App. 1978) (affirming trial court's finding that oral surgeon was not liable for malpractice in tooth extraction, when root tip was left in mouth and subsequently discovered by another dentist, who did not remove the root tip at that time; experts testified that leaving root tip in patient's mouth was not uncommon dentistry practice and would not be considered as falling below standard practice).

Blodgett has provided no "verifying medical evidence" to establish the detrimental effect of delay in medical treatment. Blodgett's assertion that his need was sufficiently serious to rise to the level of a constitutional claim is insufficient when medical evidence does not support his self-diagnosis.

² The court notes, however, that Blodgett's witness is a chiropractic and osteopathic physician; the record does not indicate he has experience with, or knowledge of, dental procedures.

Kayser, 16 F.3d 281. An X-ray is a diagnostic technique. *Estelle*, 429 U.S. at 107. The question of whether an X-ray or another diagnostic technique or treatment form is indicated is a "classic example" of a medical judgment issue. *Id.* "A medical decision not to order an X-ray, or like measures, does not represent cruel and unusual punishment." *Id.*

The court is unwilling to speculate that under the circumstances of this case, a broken fragment of a root tip, left for three days, without more, constitutes a serious medical need.

Absent supporting medical evidence, Blodgett may establish the objective component of his claim by showing that the seriousness of his need or deprivation would have been obvious to a layperson. *See Roberson*, 198 F.3d at 648.

Blodgett does not dispute that Dunham believed, after visual inspection, that the root tip was removed during the rinsing and suctioning process. The continued presence of a root tip cannot fairly be said to have been obvious to any layperson. Furthermore, given that the dentist's visual inspection indicated the sinus was not open and the root tip had likely been removed through rinsing and suctioning, and given that Dunham intended to X-ray in a few days, the evidence is insufficient to support a finding that a layperson would see the necessity for an X-ray on December 13, 1999, to discover the root tip. *Cf. Echols v. Barney*, No. 72314, 1998 WL 213153, at *1 (Ohio Ct. App. April 30, 1998) (affirming jury's defense verdict for dentist, when dentist did not tell plaintiff about root tip remaining in her mouth until follow-up visit two days after tooth extraction, and oral surgeon removed root tip).

Finally, Blodgett has not pointed to evidence in the summary judgment record sufficient to establish that society considers the risk from not taking a post-extraction X-ray under the conditions of this case to be so grave that it violates contemporary standards of decency to expose anyone unwillingly to such a risk. *See Helling*, 509 U.S. at 36.

The court finds that, viewing the facts and reasonable inferences in the light most favorable to Blodgett, there is insufficient evidence to establish the existence of a serious medical need. The court therefore respectfully recommends that summary judgment be granted.

B. Deliberate Indifference

The subjective component of an Eighth Amendment claim is satisfied where a prison official "knows of and disregards an excessive risk to inmate health or safety." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). "[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Id.* Thus, to satisfy the subjective component, "a plaintiff must establish that the official in question did in fact know of the risk." *Gregoire v. Class*, 236 F.3d 413, 417 (8th Cir. 2000) (citing *Farmer*, 511 U.S. at 837). Mere negligence in diagnosing, treating, or responding to a known medical condition does not violate the Eighth Amendment. *Id.* at 418 (citing *Estelle*, 429 U.S. at 106).

For an intentional delay in obtaining medical care to rise to an actionable Eighth Amendment violation, "the information available to the prison official must be such that a reasonable person would know that the inmate requires medical attention," or the official's actions or inactions "must be so dangerous to the health or safety of the inmate that the official can be presumed to have knowledge of a risk to the inmate." *Tlamka*, 244 F.3d at 633. A prisoner's disagreement with the course of treatment provided to him does not alone suffice to allege a serious medical need to which prison officials were deliberately indifferent. *Kayser*, 16 F.3d at 281.

In most cases surveyed, dentists were held not negligent in failing to discover and remove root tips following extractions. *See, e.g., James v. Gordon*, 690 So.2d 787, 789, 790-91 (La. Ct. App. 1996) (affirming lower court's finding that general dentist did not commit malpractice in wisdom tooth extraction, when root tips were broken and left in gums approximately 18 months and led to pain and nerve damage, including loss of sensation in patient's lip that persisted after the root tips were removed and lasted at least until trial; dentist mistakenly believed he had retrieved root tips, and failed to X-ray to verify their removal); *Burge v. Morton*, 425 N.E.2d 539, 540-41 (Ill. App. Ct. 1981) (affirming trial court's judgment in dentist's favor in negligence action, when diabetic plaintiff developed infection requiring hospitalization after dentist was unable to remove root tips during extraction of two wisdom teeth, prescribed an antibiotic, and scheduled an appointment for plaintiff with oral surgeon); *Weeks v. Heinrich*, 447 S.W.2d 688, 692-93 (Tex. Civ. App. 1969) (affirming jury's finding that dentist was not liable for negligence in failing to extract all of plaintiff's teeth and in failing to remove fragments and

root tips of certain extracted teeth); *see generally Giroux v. Zimmerman*, Civ.A. No. 89-4209, 1989 WL 86212, at *1-2 (E.D. Pa. July 27, 1989) (dismissing complaint with leave to amend, when inmate alleged prison dentist violated his Eighth Amendment rights in attempted tooth extraction; prisoner alleged his jaw was fractured, a piece of tooth was left in his jaw, which was swollen, bleeding, and painful, and he was unable to eat; oral surgeon removed tooth fragment several days later, and prisoner received pain medication and antibiotics; "given that plaintiff received care for his dental problem it is unclear how defendants' actions were deliberately indifferent").

Two appeals courts, however, reversed directed verdicts in favor of dentists in malpractice actions, holding evidence would permit jury to find dentists were negligent in failing to discover and remove root tips left after extraction. See Gorsalitz v. Harris, 410 S.W.2d. 956, 957 (Tex. Civ. App. 1966) (reversing and remanding on rehearing trial court's instructed verdict in favor of dentist in malpractice action, when dentist ruptured patient's sinus during tooth extraction, leaving root tip lodged in patient's sinus, necessitating further surgery when another dentist discovered root tip over year later; holding evidence presented fact question as to whether dentist was negligent in leaving root tip in gum or sinus, and whether such negligence necessitated subsequent operation to remove root tip and was proximate cause of resulting damages); Furnari v. Lurie, 242 So.2d 742, 743-44 (Fla. Dist. Ct. App. 1971) (holding evidence would permit jury to conclude defendant was negligent in failing to discover and remove infected root left in patient's jaw following molar extraction in which tooth was broken, where dentist made no attempt to determine if root tip remained in jaw immediately following extraction, and, when patient returned to dentist's office two days after operation still complaining of intense pain, dentist assured her all tooth fragments had been removed). Here, unlike the dentist in Gorsalitz, Dunham did not rupture the sinus or leave the root tip in the sinus, and he checked the sinus for openings. Unlike the dentist in Furnari, Dunham made an attempt through visual inspection to determine if the root tip remained in Blodgett's mouth immediately following extraction, and, when Blodgett returned to Dunham three days after the extraction complaining of intense pain, the dentist Xrayed and removed the root tip.

As already noted, Blodgett does not dispute that Dunham believed the root tip probably was

removed after rinsing and suctioning, that the dentist observed the inmate's sinus had no opening, or that Dunham planned to X-ray a few days after the extraction. Dunham prescribed a painkiller and antibiotic for Blodgett after the tooth extraction. No evidence indicates that after the December 13, 1999, extraction, Dunham knew Blodgett was in pain and failed to provide treatment before December 16, 1999. When the dentist learned on December 16 that Blodgett was in pain, he saw the inmate in his office the same day, X-rayed, removed the root tip, and prescribed medication. Evidence of Dunham's knowledge of any danger associated with the root tip is insufficient to establish the subjective component of a deliberate indifference claim.

Furthermore, the evidence is insufficient to establish that a reasonable person would have known that the root tip remained and required immediate removal, or that Dunham's actions or inactions were so dangerous to the health or safety of Blodgett that Dunham can be presumed to have knowledge of a risk to the inmate. *See Tlamka*, 244 F.3d at 633. Blodgett's disagreement with the course of treatment provided to him does not alone suffice to allege a serious medical need to which prison officials were deliberately indifferent. *See Kayser*, 16 F.3d at 281.

Because the evidence is insufficient to establish that Dunham was deliberately indifferent to Blodgett's medical needs, serious or not, the court respectfully recommends that Defendant's Motion for Summary Judgment be granted on this claim.

III. Failure to Prescribe Pain Medication and Liquid Diet

Blodgett next asserts that Dunham should have prescribed Tylenol No. 3 following the extraction of the root tip, and should have placed him on a liquid diet.

Dunham decided not to prescribe the narcotic-containing medicine Blodgett requested, because Dunham believed that Motrin was sufficient for Blodgett's pain management; Blodgett's medical record stated he was allergic to codeine, which is an ingredient in the pain medication Blodgett requested; and Dunham suspected, and later confirmed, that Blodgett had a history of substance abuse. Blodgett does not dispute that his medical records indicate he had an allergy to codeine and a history of substance abuse.

The court assumes, as it must for purposes of summary judgment, that Dunham did not

prescribe a liquid diet. Dunham did not believe that Blodgett, who had two sutures following removal of the root tip, needed a liquid diet. No supporting medical evidence indicates Blodgett had a serious medical need for a liquid diet. Similarly, the court finds that Blodgett's need for a liquid diet would not have been obvious to a layperson.

Blodgett's assertions amount to a dispute as to the type of treatment he received, and do not alone give rise to an action under § 1983. *See Kayser*, 16 F.3d at 281. The inmate's expert stated that Dunham met the medical standard in his prescription of pain medication for the inmate. (Pl.'s Amended Desig. Expert Witness at 3-4.) Blodgett has provided no evidence, other than his own assertions, that Tylenol No. 3 and a liquid diet were necessary, and that Dunham was aware of the that necessity. Because Blodgett has offered no such evidence, no genuine issue of material fact exists, and Blodgett's allegations cannot survive summary judgement.

The court respectfully recommends that Dunham's Motion for Summary Judgment be granted on this claim.

IV. Qualified Immunity

Dunham asserts he is entitled to qualified immunity from Blodgett's claims. Before a defendant may invoke this affirmative defense, the court must first determine whether the plaintiff has established a constitutional violation by the defendant. *Hedges v. Poletis*, 177 F.3d 1071, 1074 (8th Cir. 1999); *see Saucier v. Katz*, __ U.S. __, __, 121 S. Ct. 2151, 2156 (2001). Because the court finds that Blodgett has provided insufficient evidence to show that a constitutional violation occurred, the issue of qualified immunity is moot. *See Saucier*, 121 S. Ct. at 2156 ("If no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity.").

RECOMMENDATION

Viewing the facts and inferences in the light most favorable to Blodgett, the court finds that there is insufficient evidence from which a jury could infer that Dunham actually knew of, and disregarded, Blodgett's serious medical needs in violation of his Eighth Amendment rights.

IT IS RESPECTFULLY RECOMMENDED, pursuant to 28 U.S.C. § 636(b)(1)(B), that Dunham's Motion for Summary Judgment (Clerk's No. 11) be granted, and judgment entered in favor of Defendant Dunham.

ORDER

IT IS ORDERED that the parties have until September 17, 2001, to file written objections to this Report and Recommendation, under 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained. *Martin v. Ellandson*, 122 F. Supp. 2d 1017, 1025 (8th Cir. 2000); *Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990). Such extensions will be freely granted. Any objections filed must identify the specific portions of the Report and Recommendation and relevant portions of the record to which the objections are made and set forth the basis for such objections. *See* Fed. R. Civ. P.72; *Martin*, 122 F. Supp. 2d at 1025; *Thompson*, 897 F.2d at 357. Failure to timely file objections may constitute a waiver of a party's right to appeal questions of fact. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Martin*, 122 F. Supp. 2d at 1025.

IT IS SO ORDERED.

Dated this ____ day of August, 2001.

CELESTE F. BREMER UNITED STATES MAGISTRATE JUDGE